



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No FMCSA-2013-0457]

Motor Carrier Management Information System (MCMIS) Changes to Improve Uniformity in the Treatment of Inspection Violation Data

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment

SUMMARY: FMCSA announces changes to its Motor Carrier Management Information System (MCMIS) to allow the Agency to upload the results of associated adjudicated State citations for roadside inspection violation data. MCMIS will be modified to accept adjudication information concerning a citation associated with a violation that was dismissed or resulted in a finding of not guilty; resulted in a conviction of a different or lesser charge; or resulted in conviction of the original charge. This action will improve roadside inspection data quality. In addition, the Agency announces new processes to provide more uniformity in the way the inspection violation data are treated in FMCSA data systems. FMCSA seeks public comments on the prospective application of the changes.

DATES: Comments must be received on or before [insert date 30 days from publication in the Federal Register].

ADDRESSES: You may submit comments identified by docket number FMCSA-2013-0457 using any one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation,

West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE.,
Washington, DC 20590-0001.

- Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., e.t.,
Monday through Friday, except Federal holidays. The telephone number is 202-
366-9329.

To avoid duplication, please use only one of these four methods. See the “Public
Participation and Request for Comments” heading under the SUPPLEMENTARY
INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Stevenson, Federal
Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC
20590, telephone 202-366-5241 or by e-mail: courtney.stevenson@dot.gov. FMCSA
office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal
holidays. If you have questions on viewing or submitting material to the docket, call
Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related
materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice
(FMCSA-2013-0457), indicate the specific section of this document to which each
comment applies, and provide a reason for each suggestion or recommendation. You may
submit your comments and material online or by fax, mail, or hand delivery, but please

use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, “FMCSA-2013-0457” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number, “FMCSA-2013-0457” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

II. Executive Summary

As discussed below, States adopt and enforce motor carrier safety and hazardous materials laws and regulations as an eligibility requirement for FMCSA's Motor Carrier Safety Assistance Program (MCSAP) and report violations discovered through roadside inspections to FMCSA. Motor carriers and drivers alleging that errors have occurred may petition the States for correction. High-quality data that are complete, timely, accurate, and consistently reported enable FMCSA to continue to achieve its safety mission by identifying trends in the violation data.

One of the challenges that the Agency faces in trying to ensure the data are accurate is how best to consider violations cited during roadside inspections that are subsequently adjudicated in State and local courts. This is especially difficult when the roadside inspection results are uploaded by the State enforcement agency into FMCSA's information systems and the subsequent adjudication happens much later with no practical means for the adjudication results to be transmitted directly to FMCSA. In

response to this challenge, FMCSA is modifying its MCMIS to accept adjudication information concerning a citation associated with a violation that (1) was dismissed or resulted in a finding of not guilty; (2) resulted in a conviction of a different or lesser charge; or (3) resulted in conviction of the original charge. The Agency's State partners will modify their processes and procedures to capture the State and local adjudications results associated with roadside inspection violations and upload the information to FMCSA. These changes will improve the uniformity and quality of data vital to improving safety on the Nation's roads.

III. Background

As discussed below, States enforce motor carrier safety laws under a Federal grant program and report violations discovered through roadside inspections to FMCSA. Parties alleging that errors have occurred may petition the States for correction. High-quality data that are complete, timely, accurate, and consistently reported enable FMCSA to continue to achieve its safety mission. Therefore, FMCSA announces changes to MCMIS and processes to append the results of associated adjudicated State citations to the inspection violation data. These changes improve the uniformity and quality of data vital to improving safety on the Nation's roads.

A. Definitions

For the purposes of this notice, the following definitions apply:

- **Adjudicated Citation**: A citation that has been contested and resolved through a due process proceeding in a State, local, or administrative tribunal, regardless of how the action is resolved, whether by a judge or prosecutor or as part of a plea agreement or otherwise.

- Citation: A notice, issued by a law enforcement officer to a commercial motor vehicle driver for a violation of State law or State-adopted Federal Motor Carrier Safety Regulation (FMCSR) or Hazardous Materials Regulation (HMR). The driver may contest the citation through a State-provided administrative or judicial system.
- Conviction (as defined at 49 CFR 383.5 and 390.5): An unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
- Unvacated: Refers to an order or judgment that has not been cancelled or rescinded.

B. Databases for Inspection Data

State law enforcement officials routinely conduct roadside inspections documenting violations of State laws or regulations that are “compatible” with the FMCSRs and HMRS. See 49 CFR 350.105 (which defines “compatible or compatibility”). State officials, at their discretion, may issue State citations for the violations recorded on the roadside inspection report. States enter roadside inspection and violation data into SafetyNet, a database management system that allows entry, access, analysis, and reporting of data from driver/vehicle inspections, crashes, compliance reviews, assignments, and complaints. It is operated at State safety agencies and Federal

Divisions and interfaces with roadside inspection software, SAFER¹, MCMIS, and State systems. The MCMIS data are then used in other FMCSA data systems, including the Pre-employment Screening Program (PSP)² and the Safety Measurement System (SMS).³

Drivers and motor carriers may challenge citations associated with violations recorded during roadside inspections through State judicial or administrative systems. A citation that has been resolved through a State's judicial or administrative process, regardless of outcome, is considered to be adjudicated. Drivers, motor carriers, and members of the public may file a Request for Data Review (RDR) in FMCSA's DataQs system for acknowledgement of the adjudication in the inspection record when the State process does not result in conviction of the original charge.

C. Motor Carrier Safety Data Correction System

Pursuant to 49 CFR 350.201(s), one of the conditions for participation in the MCSAP is that a State must establish a program to ensure that accurate and timely motor carrier safety data are collected and reported, and ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA. DataQs is that national motor carrier data correction system (49 CFR 350.211, ¶ 11).

DataQs is an online system that provides an electronic means for drivers, motor carriers, and members of the public to submit concerns about the accuracy of Federal and State crash, inspection, and violation data in FMCSA data systems. When a request for an

¹ SAFER is FMCSA's Safety and Fitness Electronic Records (SAFER) system.

² PSP helps motor carriers make more informed hiring decisions by providing electronic access to a driver's crash and inspection history from MCMIS. See <http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

³ SMS is an automated system that quantifies the on-road safety performance of motor carriers so that FMCSA can identify unsafe carriers, prioritize them for intervention, and monitor if a motor carrier's safety and compliance problem is improving. See <http://csa.fmcsa.dot.gov/>

RDR is filed, the DataQs system automatically forwards the request to the appropriate Federal or State office for processing and resolution (<https://dataqs.fmcsa.dot.gov/>).

Presently, SafetyNet and MCMIS record only inspection and violation data from the initial inspection report, and do not contain a data field that would allow the State to append the result of an adjudicated citation to the appropriate violation on the inspection report. There is some inconsistency in how States address an adjudicated citation for which an RDR is filed. The DataQs User Guide and Manual, available at:

https://dataqs.fmcsa.dot.gov/Data/Guide/DataQs_Users_Guide_and_Best_Practices_Manual.pdf, describes standardized processes and techniques to address and resolve RDRs.

FMCSA issued guidance to State DataQs analysts in May 2011, explaining that the “. . . DataQs guidance does NOT recommend or require blanket rejection of DataQs RDRs seeking removal of violations that have been dismissed by a court. Instead, we [FMCSA] advise that the analysts exercise discretion and good judgment by carefully reviewing the reason for the court dismissal based on any and all available information and determine whether fairness dictates removal of the violation from the State and Federal database.” In following this guidance, some States will automatically remove a violation associated with an adjudicated citation for which there is no conviction, while others do not remove the violation unless evidence submitted to the court supports a finding that the violation did not occur. Today’s notice is intended to create greater uniformity across the States.

IV. Overview of Changes

A. New Data Field for Adjudicated Citations Results

FMCSA will issue revised direction to the States to document adjudication results and supplement the initial inspection report when an RDR containing appropriate documentation is submitted. If the RDR provides adequate documentation of an adjudicated citation related to a violation or violations recorded in a roadside inspection report, the State will enter adjudication results into SafetyNet. State and Federal data systems will be modified to accept data concerning a citation associated with a violation that (1) was dismissed or resulted in a finding of not guilty; (2) resulted in a conviction of a different or lesser charge; or (3) resulted in conviction of the original charge. Those adjudications, recorded in SafetyNet, will be uploaded into MCMIS.

FMCSA is revising the MCMIS database and creating a new data field to allow inclusion of adjudicated citation results associated with violations documented during an inspection. The results of adjudicated citations recorded in MCMIS will be reflected in FMCSA's SMS and PSP.

The following table indicates how the adjudication outcomes documented in MCMIS will impact the use of the cited violation in FMCSA's SMS and PSP databases:

Result of adjudicated citation associated with a violation uploaded to MCMIS:	Violation in SMS:	Violation in PSP:
1) Convicted of original charge	Retain violation	Retain violation
2) Not guilty/Dismissed	Remove violation	Remove violation
3) Convicted of different charge	Retain AND indicate violation as "Resulted in conviction of a different charge"; SMS severity weight set to lowest value in BASIC*	Retain AND indicate violation as "Resulted in conviction of a different charge"

* SMS quantifies motor carrier performance in seven Behavioral Analysis Safety Improvement Categories (BASICS). The SMS methodology, including a description of severity weights used in the methodology, is provided at <http://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf>

As required by FMCSA's MCSAP regulations (i.e., 49 CFR part 350) States must follow the Agency's regulatory definition of "conviction" as outlined in the definitions section in this notice and in 49 CFR 383.5 and 390.5 and address RDRs accordingly. Thus, when an RDR indicates that a State court dismissed a citation while still imposing a fine or court cost, the outcome will be recorded in SafetyNet as a conviction by the State.

Upon implementing the MCMIS policy discussed in this notice, FMCSA will update the DataQs guidance manual to reflect these changes.

B. Prospective Application of the MCMIS Changes

The primary purpose of these changes is to improve uniformity in the treatment of violation data associated with adjudicated citations. FMCSA intends that States record adjudicated citation results only for citations associated with, and issued during, a roadside inspection that occurs on or after the implementation date. This prospective approach is consistent with all of FMCSA's previous system changes designed to improve data quality.

FMCSA believes the prospective application will mitigate the potential for significantly increased numbers of RDRs, based on hundreds—potentially thousands—of past adjudicated citations, which could quickly exhaust States' DataQs capability. Such a drain on State DataQs staffs could prevent States from promptly acting on other RDR requests and/or could create a need to redirect scarce State resources from roadside enforcement to DataQs processing, adversely affecting motor carrier safety enforcement. In addition, the prospective application will (1) provide a uniform and orderly process for the States to incorporate recording adjudicated citations into their State MCSAP

Commercial Vehicle Safety Plans and budgets (see 49 CFR 350.213 for description of CVSP); (2) provide an effective process that the Agency can test to ensure system effectiveness and data quality; and (3) reduce the cost of applying and implementing these changes across the Agency and the States. FMCSA seeks comments on the prospective application of the changes.

C. Prohibition on Masking Convictions

The FMCSA emphasizes the importance of accurate information concerning traffic violations in addition to roadside inspection violations. The Agency will continue its work with the States to ensure that commercial learner's permit (CLP) and commercial driver's license (CDL) holders who are found to have engaged in unsafe driving behaviors are not provided with relief from the consequences of these unsafe actions through masking of their convictions by the States. Masking convictions allows commercial drivers to accumulate multiple serious traffic safety violations without the driver's State of licensure or other States being aware of the driver's actual driving history.

FMCSA regulation at 49 CFR 384.226 prohibits States from masking convictions, deferring imposition of judgment, or allowing an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the Commercial Driver's License Information System driving record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. The Agency views the practice of State courts dismissing citations after a guilty plea has been

entered or following payment of a fine or mandatory contribution to a State program as a condition of dismissal, as “masking” of a commercial driver’s violation of State or local traffic control laws.

The changes to State and FMCSA data systems outlined in this notice will enable both the Agency and the State licensing agencies to better track and document patterns and practices that are inconsistent with 49 CFR 384.226 concerning the masking prohibition. States found to have used masking or other diversionary programs may be found in substantial noncompliance and could risk decertification of their CDL programs, which could impact grant funding.

Issued on: November 26, 2013

Anne S. Ferro
Administrator

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